

Name Luis A. Castellanos
Street Address 4449 E Holland Ave
City and County Fresno - Fresno County
State and Zip Code CA 93726
Telephone Number 559.801.1229

FILED

NOV 22 2023

CLERK U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY _____ DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

Luis A Castellanos

(Write the full name of each plaintiff who is filing this complaint. If the names of all the plaintiffs cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)

-against-

Harder Mechanical Contractors

(Write the full name of each defendant who is being sued. If the names of all the defendants cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)

Complaint for a Civil Case

Case No. 1:23-cv-01639 ~~ADA~~ ADA-CDB
(to be filled in by the Clerk's Office)

Jury Trial: ☒ Yes ☐ No
(check one)

I. The Parties to This Complaint**A. The Plaintiff(s)**

Provide the information below for each plaintiff named in the complaint. Attach additional pages if needed.

Name	<u>Luis A. Castellanos</u>
Street Address	<u>4449 E Holland Ave</u>
City and County	<u>Fresno, Fresno County</u>
State and Zip Code	<u>CA 93726</u>
Telephone Number	<u>559.801.1229</u>

B. The Defendant(s)

Provide the information below for each defendant named in the complaint, whether the defendant is an individual, a government agency, an organization, or a corporation. For an individual defendant, include the person's job or title (if known). Attach additional pages if needed.

Defendant No. 1

Name	<u>Harder Mechanical Contractors</u>
Job or Title (if known)	<u></u>
Street Address	<u>2148 NE Milk Jr Blvd</u>
City and County	<u>Portland</u>
State and Zip Code	<u>OR 97212</u>
Telephone Number	<u></u>

Defendant No. 2

Name	<u>Brian Colombo</u>
Job or Title (if known)	<u>general foreman</u>
Street Address	<u></u>
City and County	<u>Bakersfield</u>
State and Zip Code	<u></u>
Telephone Number	<u></u>

Defendant No. 3

Name _____
 Job or Title _____
 (if known) _____
 Street Address _____
 City and County _____
 State and Zip Code _____
 Telephone Number _____

Defendant No. 4

Name _____
 Job or Title _____
 (if known) _____
 Street Address _____
 City and County _____
 State and Zip Code _____
 Telephone Number _____

II. Basis for Jurisdiction

Federal Courts are courts of limited jurisdiction (limited power). Generally, only two types of cases can be heard in Federal Court: cases involving a federal question and cases involving diversity of citizenship of the parties. Under 28 U.S.C. § 1331, a case arising under the United States Constitution or federal laws or treaties is a federal question case. Under 28 U.S.C. § 1332, a case in which a citizen of one state sues a citizen of another state or nation and the amount at stake is more than \$75,000 is a diversity of citizenship case. In a diversity of citizenship case, no defendant may be a citizen of the same state as any plaintiff.

What is the basis for Federal Court jurisdiction? *(check all that apply)*

☒ Federal question ☐ Diversity of citizenship

Fill out the paragraphs in this section that apply to this case.

A. If the Basis for Jurisdiction Is a Federal Question

List the specific federal statutes, federal treaties, and/or provisions of the United States Constitution that are at issue in this case.

Discrimination based on disability & reprisal for
Cooperating in complaint process

B. If the Basis for Jurisdiction Is Diversity of Citizenship

1. The Plaintiff(s)

a. If the plaintiff is an individual

The plaintiff, (name) Luis A. Castellanos is a citizen of
the State of (name) California.

b. If the plaintiff is a corporation

The plaintiff, (name) _____, is incorporated
under the laws of the State of (name) _____,
and has its principal place of business in the State of (name)
_____.

(If more than one plaintiff is named in the complaint, attach an additional page providing the same information for each additional plaintiff.)

2. The Defendant(s)

a. If the defendant is an individual

The defendant, (name) _____, is a citizen of
the State of (name) _____. Or is a citizen of
(foreign nation) _____.

b. If the defendant is a corporation

The defendant, (name) Harder Mechanical Contractors, is incorporated under the laws of the State of (name) Oregon, and has its principal place of business in the State of (name) Oregon. Or is incorporated under the laws of (foreign nation) _____, and has its principal place of business in (name) _____.

(If more than one defendant is named in the complaint, attach an additional page providing the same information for each additional defendant.)

3. The Amount in Controversy

The amount in controversy—the amount the plaintiff claims the defendant owes or the amount at stake—is more than \$75,000, not counting interest and costs of court, because *(explain)*:

loss of potential wages earned through
duration of job (6 years) = \$1,000,000.00
(1 million dollars)

III. Statement of Claim

Write a short and plain statement of the claim. Do not make legal arguments. State as briefly as possible the facts showing that each plaintiff is entitled to the damages or other relief sought. State how each defendant was involved and what each defendant did that caused the plaintiff harm or violated the plaintiff's rights, including the dates and places of that involvement or conduct. If more than one claim is asserted, number each claim and write a short and plain statement of each claim in a separate paragraph. Attach additional pages if needed.

I believe I was unjustly fired from Harder Mechanical
Contractors for having cooperated & providing witness
testimony against a Harder Mechanical employee
- Brian Colombo. I believe my firing was a retaliatory
reprisal action taken against me.

IV. Relief

State briefly and precisely what damages or other relief the plaintiff asks the court to order. Do not make legal arguments. Include any basis for claiming that the wrongs alleged are continuing at the present time. Include the amounts of any actual damages claimed for the acts alleged and the basis for these amounts. Include any punitive or exemplary damages claimed, the amounts, and the reasons you claim you are entitled to actual or punitive money damages.

seeking compensation for loss of wages & overtime &
per diem in amount of 1 million dollars and no cents:
\$3,205.13 weekly wages x 52 weeks x 6 (years
of length of job) = \$1,000,000 dollars

V. Certification and Closing

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

I agree to provide the Clerk's Office with any changes to my address where case-related papers may be served. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Date of signing: 11-22, 2023

Signature of Plaintiff

Printed Name of Plaintiff

Luis Castellanos
Luis A Castellanos



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Fresno Local Office
2500 Tulare Street, Suite 2601
Fresno, CA 93721
(559) 753-8480
Website: www.eeoc.gov

DETERMINATION AND NOTICE OF RIGHTS

(This Notice replaces EEOC FORMS 161, 161-A & 161-B)

Issued On: 08/24/2023

To: Mr. Luis A. Castellanos
4449 E Holland Ave
FRESNO, CA 93726
Charge No: 480-2022-03166

EEOC Representative and email: MARGIE VILLEGAS
INVESTIGATOR
margie.villegas@eeoc.gov

DETERMINATION OF CHARGE

The EEOC issues the following determination: The EEOC will not proceed further with its investigation and makes no determination about whether further investigation would establish violations of the statute. This does not mean the claims have no merit. This determination does not certify that the respondent is in compliance with the statutes. The EEOC makes no finding as to the merits of any other issues that might be construed as having been raised by this charge.

NOTICE OF YOUR RIGHT TO SUE

This is official notice from the EEOC of the dismissal of your charge and of your right to sue. If you choose to file a lawsuit against the respondent(s) on this charge under federal law in federal or state court, **your lawsuit must be filed WITHIN 90 DAYS of your receipt of this notice.** Receipt generally occurs on the date that you (or your representative) view this document. You should keep a record of the date you received this notice. Your right to sue based on this charge will be lost if you do not file a lawsuit in court within 90 days. (The time limit for filing a lawsuit based on a claim under state law may be different.)

If you file suit, based on this charge, please send a copy of your court complaint to this office.

On behalf of the Commission,

Armando Hernandez

Digitally signed by Armando Hernandez
Date: 2023.08.24 12:58:46 -0700

Armando Hernandez
Fresno Local Office Director

Cc:
Bill Murphy
Harder Mechanical Contractors
2148 NE Milk Jr Blvd
Portland, OR 97212

Liza Christie
GORDON REES SCULLY MANSUKHANI
275 Battery Street Suite 2000
San Francisco, CA 94111

Please retain this notice for your records.

August 30, 2023

To whom it may concern, below is my account of what happened on Thursday November 18, 2021 while Luis Castellanos and I worked at the Bakersfield Renewable Fuels Refinery.

We spent the majority of the day in the laydown yard identifying and sorting iron pieces. During lunch our general foreman, Brian Colombo, told us we would end the day at the reactor unit performing remediation on work previously done by another contractor. At approximately 2:30 pm we began work on the reactor unit. This involved identifying and removing incorrect shim plates, nuts, bolts, washers and replacing them with the right ones. Luis and I started to work individually on separate connections but as corrections were being completed we found ourselves working in close quarters on the final column. The work we were doing required the use of tools such as spud wrenches, sleeve bars, wedges and sledgehammers.

It was while Luis was swinging a sledgehammer at a wedge that Brian Colombo snapped and began yelling at me about my physical appearance. He wanted to know if there was something wrong with one of my arms and why I wasn't helping Luis. He demanded I tell him why it looked to him that I favored one arm. He warned me I better not be a "one-armed motherfucker" because he had "no use for a one-armed motherfucker at this jobsite". I told Brian to calm down and not worry about me. That there was nothing wrong, just that Luis was swinging the sledgehammer and I was doing just as he was in keeping a safe distance. I sarcastically asked him if he thought I should get in between Luis swinging the sledgehammer and the wedge. Brian didn't answer me.

Feel free to contact me if you have any further questions about what happened.

Sergio Alvarez
559 847-8103

Sergio Alvarez and I began working at the Bakersfield Renewable Fuels (BKRF) refinery on November 8, 2021. Sergio was dispatched as a foreman and I as steward. Our general foreman was Brian Colombo. For the following two weeks Sergio and I worked primarily in the laydown yard identifying and sorting iron pieces that would be used to assemble the reactor and pipe rack structures. During this time Colombo notified us that upon the hiring of additional ironworkers, Sergio would transition to unit foreman, I would be elevated to foreman of the laydown yard, and a new job steward would be appointed from the new hires. He also told us that once more people were hired, Sergio and I would cease performing any physical labor, that our job as foremen would be to direct and supervise work being done by other ironworkers. Then on November 18th, an incident occurred in which would have drastic ramifications on both mine and Sergio's tenure at BKRF refinery.

***Please refer to document titled "Statement from Sergio Alvarez"**

On November 22, 2021 after having consulted with my Business Agent Joe Burnett, and per my job as Union Steward, as well as being a firsthand witness to the incident on November 18, 2021 I brought to the attention of Harder Mechanical management Sergio Alvarez's intention to file a complaint against General Foreman Brian Colombo.

After initiating the complaint process and providing my witness statement Harder Mechanical Onsite Superintendent, Ronnie Pearce asked if I too had a problem with Colombo? I told him that I didn't and I was therefore ordered to return to work until further notice. Sergio was instructed to wait in the conference room. Being that the new hires would be in orientation the entire day, Brian and I were to work alone for the remainder of the day.

Below are the names of the union ironworkers hired on November 22, 2021:

Manuel Alvarez - journeyman
Manuel Alvarez Jr. - apprentice
John Gillette - journeyman
Chris Gonzales - journeyman
Orlando Lindholm - journeyman
Mitchell ? - apprentice
Doug Sipes - journeyman

Upon meeting up with Brian it was clear he was extremely agitated. In the truck as we made our way to the work area, he angrily brought up the subject of the complaint and initially denied ever making such statements to Sergio. Colombo angrily accused Sergio and I of making up the entire story. He lectured me on the serious nature of the allegations and how they could possibly get him fired. I retorted back at him saying, "Look man, I am not a fucking liar. I heard exactly what you said. I was standing right there! You were man enough to say what you said to him, now be man enough to own up to it."

Brian then confessed and resorted to belittling me saying that, "Telling on another ironworker is bitch shit. We don't snitch on each other." He told me, "What the fuck is wrong with you two? You just a bunch of fuckin' cry babies."

I responded back saying, "What the fuck is wrong with me? What the fuck is wrong with you? You were the coordinator of an apprenticeship! How would you not know better than to talk to people that way? Did I not do what I am supposed to do as a steward?" To that, Brian bit his lip and shook his head in silence. The rest of the day working with Colombo felt like walking on eggshells. The tension was clear and present as we went about performing our tasks. Colombo and I worked together until lunchtime. Colombo took his lunch break inside the Harder Mechanical office while I had mine outside in the break area. Sergio joined me outside soon after. Just before lunch was over Onsite Superintendent Ronnie Pearce approached us with instructions to stay put. Ronnie told us that he and other Harder Mechanical management would join us shortly for a meeting.

November 22, 2021 was also Sergio's last day at the refinery. In the following weeks he initiated a grievance with our Local Hall against Harder Mechanical. He asked that I provide a witness summary statement for his records and I obliged.

***Please refer to documents titled Sergio Alvarez**

On November 29, 2021 I was promoted to foreman of the laydown yard, Doug Sipes replaced Sergio Alvarez as foreman of the unit assembly, and Manuel Alvarez was made job steward.

For the remainder of my time at the BKRF refinery –approximately five weeks, it seemed to me that Harder Mechanical management's, specifically Ronnie Pearce and Mike Nolan, behavior towards me took a drastic change. No longer were our interactions warm and friendly as they had always been, instead I was given the cold shoulder the rest of my time at the refinery. Where once I would be greeted with a "Hello. How are you? How's it going?" and asked about the tasks we were currently or preparing work on, I was now barely acknowledge with a head nod before quickly turning their attention away. Unless I initiated an interaction, they would not speak to me. Even then, their responses would be very short and formal before changing the subject. This was in direct contrast to how they treated personnel from other trades. For the rest of my time at the refinery, being in their presence was very awkward to say the least.

In the next five weeks Brian Colombo made many attempts to discourage me from cooperating in the complaint against him. He would do peculiar things such as pick me up from the laydown yard to supposedly go over the structure drawings on his computer. However, in reality we spent most of the time talking about Sergio Alvarez instead. Colombo wanted to know how Sergio was doing, whether he was planning to return, and especially if was going to follow through with his complaint against him? Much to Colombo's chagrin, I would tell him that I had no idea.

I found these visits to the office strange for several reasons. First, there was no need for seclusion as Colombo, Doug Sipes, and I each had copies of the drawings and could go

over them anywhere on the jobsite. Secondly, as foreman I was in charge of the lay down yard and Doug Sipes was to run the reactor and pipe rack assembly, yet I was the only one Colombo would include in these meetings. Third, it was Doug Sipes who was having difficulties not only understanding the assembly process but also identifying the pieces themselves. It would seem imperative that Doug be included in these meetings not only for the sake of production but for safety as well.

On the other hand, Colombo would regularly acknowledge amongst our group how well I grasped his plan for getting the unit built. Out loud Colombo would also often tell us ironworkers how fortunate we were to be working for Harder Mechanical, a great company that does a ton of work in refineries around the country. He'd say that once things were up to full speed Harder Mechanical would be practically shoveling money into our pockets with all the overtime that would come. He also made a point of telling us how well connected we was and that through a good friend of his he got the general foreman job with Harder Mechanical.

During these one on one sessions it became clear to me that Colombo had ulterior motives for his praise of me. Colombo would always say that I have what it takes to get on steady with a great company like Harder Mechanical. But in the same breath he would say that such opportunity would depend on whether or not I was viewed as a problem employee. These sessions made me uncomfortable and suspicious of Colombo to the point I would share my concerns with our job steward Manuel Alvarez. I told Manuel everything.

My suspicions were confirmed the week leading up to Christmas. In what was our last one on one meeting at the office, I confronted Colombo about what exactly he meant by repeatedly telling me I had what it takes to be on steady with Harder Mechanical. He said I am pretty sharp, organized, a good worker, and well spoken. I then specifically asked Colombo if, as far as he knows, whether I was viewed as problem employee by Harder Mechanical? He paused for a few seconds before saying, "Well, there is that thing with Sergio. You know that could cause a lot of problem for people." I told him, "Are you serious? Harder Mechanical just had everyone go through an extensive multi-day training, where they specifically talked about their zero tolerance policy towards harassment and discrimination and how it was every employees duty to come forward if they witnessed any such incident. I followed their company policy to a T! Why would they be made at me for it?" The meeting abruptly ended and when I got back to the laydown yard I told my steward what had just happened. Immediate action was taken against me following that meeting.

Prior to starting work every morning, a mandatory meeting was held with Harder Mechanical management and all leadership from each trade. At this meeting we would plan the workday and discuss where personnel would be working, what task they would be working on, as well as what accommodations they would need. As ironworker foreman I was required to attend these meetings and did so without fail. However, on December 22, 2021 and without any explanation, Brian Colombo told me that I would no longer be needed at these meetings. Despite all other trades continuing to have their

entire leadership (general foremen & foremen) at these meetings. I was excluded for the rest of my time at BKRF refinery.

On December 28, 2021 I lost my job at the Bakersfield Renewable Fuel refinery with Harder Mechanical. The reason given for my layoff per the Termination Notice was "Reduction of Force". This in itself was also peculiar given the fact that Harder Mechanical hired three additional union ironworkers just the day before.

Below are the names of the ironworkers hired on December 27, 2021:

Hoyt Southwood - journeyman

Troy ? - journeyman

Eric White – journeyman

November 4, 2023

To whom it may concern,

My name is Juan Manuel Alvarez. I began serving as ironworker steward while working at the Bakersfield Renewable Fuels refinery on November 29, 2021. I held this position through the time Luis Castellanos' employment there was terminated on December 28, 2021.

This letter is to verify that while employed at the refinery, Luis Castellanos on several occasions shared with me concerns he had about our general foreman Brian Colombo and what Luis felt were Brian's attempts to coerce and retaliate against him for helping Sergio Alvarez file a complaint against him. Luis told me of numerous times, which I and others were witness to, where Brian would take him back to the office to go over plans. Luis told me that these meetings were rather pointless and were instead an excuse to get him alone to talk about Sergio. Luis told me that in these meetings Brian would insinuate to Luis he could help get him hired with Harder Mechanical.

Luis also had me listen in on a phone conversation he had with Local 155 Business Manager Jesus Casteneda on December 15, 2021. In this conversation it was clear that the account given to Jesus Casteneda by Harder Mechanical personnel was in direct contrast to what Luis claimed happened during a November 22, 2021 meeting involving Sergio Alvarez. In this conversation Luis told Jesus that he stood firm on his statement and would be willing to testify in a court of law.

Approximately a week later, Luis came to me after having again met with Brian Colombo alone at the office. Luis told me Brian had told him Harder Mechanical viewed Luis as a problem employee for having cooperated in the complaint filed by Sergio. As a result of this Luis felt his job was in jeopardy. Coincidentally, from that day on Luis was not involved in the daily morning meetings mandatory for all foremen from all trades. Less than five days later Luis would be laid off, this despite the fact Harder Mechanical hired three additional ironworkers the day before. The reason given for Luis' lay off was a reduction in workforce.

In my opinion, Luis' dismissal from Harder Mechanical had nothing to do with his competence or job performance. It was personal. His firing happened without notifying me, the steward, beforehand as stipulated by the Union Ironworkers Collective Bargaining Agreement. Also, it should be noted that Brian Colombo wanted Luis off the property so bad he made the spectacle of breaking a company vehicle window in order to retrieve some of Luis' tools that were locked inside.

Please contact me if you questions on any of the information mentioned above.

Juan Manuel Alvarez
(559) 321-5575



Termination Notice

*Date: 12/28/2021

Job Name: BAKERSFIELD RENEWABLE FUELS

*Employee Name: LUIS A CASTELLANOS

*Employee No.: 94810

Shift: DAYS

Rate: IWFRMN

☒ Union Employee

☐ Salary Employee

☐ Hourly Staff Employee

*Last Day Worked: 12/28/21

Local Union No.: 155

Classification: IWFRMN

*Type of Separation

☐ Quit

☐ Discharged

☒ Reduction of Force

Reason for Discharge (Check all that apply)

☐ Insubordination

☐ Military Leave

☐ Violating Safety Rules

☐ Attendance

☐ Returning to School

☐ Doesn't Meet Site Requirements

☐ Lack of Skill for Job

☐ Policy/Procedure Violation

☐ Other _____

Is Employee Eligible for Rehire? Yes ☒ No ☐

Is Employee Eligible for Transfer? Yes ☐ No ☐

Detailed Reason for Termination

REDUCTION OF FORCE

To be filled out by Corporate only

Final Check: ☐ W/ Vac. Pay ☐ W/O Vac. Pay Severance Days Earned: _____ Severance Pay: \$ _____

*Final Pay Method: ☐ Check ☐ EFT All mailed checks shall be overnighted immediately, with the tracking numbers provided to payroll. NO EXCEPTIONS

*Date Employee Received Check: 12/28/21

Employee Signature Luis Castellanos

Effective Date: 12/28/21

*Managers Signature [Signature]

Time: 3 00

A.M.
P.M.

Immediate Supervisor [Signature]

Approved By Superintendent _____